K AB 26-5-50

1949.

File No. O. Rents/49

Legal **DEPARTMENT**

A **BRANCH**

Subject:— Opinions under the Bombay rent, Hotel rates, Lodging houses rates (control) Act, 1944

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H.V.
17/5

Office of the R. L. A.

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

Section 18.

Acceptance of 5 years rent in advance by landlord.

If conditions (2) to (5) stated in the Press not at p. 7 ante are read together, it will be clear that the amount of capital advanced by a tenant, though at interest, would be construed as payment of rent in advance within the meaning of explanation (a) to section 18(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and the receipt of such capital would offend against that provision.

Sd/- P.U.Lad,
5/1

Remembrancer of Legal Affairs.

U.R. to H.& L.O.D. No.143, dated the 6th January 1949.

Submitted for signature....

S.P./5.1
A.S.S. Sd/- G.R.
5/1.

A.L.R. Sd/- R.T.K.
5/1.

R.L.A.

4-Cs.
H.V.V.
16/5.

Office of the R.L.A.

Bombay Rents,Hotel and Lodging House Rates Control Act, 1947. secs.39(b) and 42.

It appears that Mr. S.Petros, Proprietor of Petros Boarding House, applied to the Controller of Hotels and Lodging Houses for a certificate under section 39 of the Bombay Rents, Hotel and Loding House Rates Control Act, 1947, against lodger P.T.Joseph on the ground that the lodger did cooking in his room and that he failed to abide by his contract to pay charges for lodging and full Board. The Controller considered the second ground beyond the scope of his enquiry as it was for the Court to decide that issue and held that cooking, which was done by the lodger in the room, was satisfactory cause for issuing a certificate under section 39, clause (b) and accordingly issued the certificate. Against that Order the lodrer has appealed to Government under section 42. The R.L.A. is requested to advise whether the view taken by the Controller is correct.

Section 39 of the Bombay Rents, Hotel and Lodging House Rates Control Act provides :

> "Notwithstanding anything contained in this Act a Manager of a hotel or owner of a lodging house shall be entitled to recover possession of the accommodation provided by him on obtaining a certificate from the Controller certifying that ——
>
> (a) a lodger has been guilty of conduct which is a nuisance or an annoyance to any adjoining or neighbouring lodger; or
>
> (b) the accommodation is reasonably and bona fide required by the owner of the hotel or lodging house, as the case may be, either for his own occupation or for the occupation of any person for whose benefit the accommodation is held or for any other cause which may be deemed satisfactory by the Controller."

The words "for any other cause" in clause (b) have to be read ejusdem generis. Consequently, what is essential to entitle a certificate to be issued under clause (b) is that the accommodation must be

reasonably and bona fide required for occupation. In the present case as the letter Joseph is proposed to be evicted not on the ground that the accommodation is required for occupation, but on the ground that he has been doing cooking in the room unauthorisedly. Consequently, the view taken by the Controller is not correct. It is not the proprietor's contention that cooking has been a nuisance or annoyance to any adjoining or neighbouring lodger. Consequently, clause (a) will have no application. If cooking has been done in contravention of any of the rules or conditions of the lodging house it may be possible to obtain relief under section 38. That is however a different matter with which the Controller is not concerned.

Sd/- P.V.Jad,
11/1.

Remembrancer of Legal Affairs.

U.R. to H.& L.G.D., No.390, dated the 13th January 1949.

Submitted for signature ..

S.D.
11/1

A.A.S. Sd/-
11/1.

A.L.R. R.T.K.
11/1.

R.L.A.

Please also see R.L.A's no.4158, dt.18.4.49 and Advocate General's opinion no.13,dt.21.4.49

(O.Rents/49)

4-Cs.
H.V.V.
16/6.

Office of the R.L.A.

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

Sections 33 and 38

Seen and returned.

The view at 'A' of the note of the Controller of Hotels and Lodging Houses is correct. The words "other conditions of his agreement" in section 38 of the Bombay Rents, Hotel and Lodging House Rates Control Act 1947, contemplate agreements to provide lodging with or without board.

Sd/- P.N.Lad, / 25.1

Remembrancer of Legal Affairs.

U.R. to H.& L.G.D., No.972, dated the 26th Jan. 1949.

4-Cs.
U.U.V.
16/5.

Office of the R.L.A.

Defence of India Rules.
Rule 81(2)

Bombay Rents, Hotel and Lodging and House Rates Control Act, 1947.

There is no legal liability on Government to restore possession to the landlord after evicting the known tenant. There is however a moral responsibility on Government to see that the arrangement settled at the conference should be implemented although the landlord would not be able to enforce it, in view of the Rent Control Act. The premises being derequisitioned, the expiry of the Requisitioned Land (Continuance of Powers) Act would be immaterial.

Sd/- P.V.Lad,
14/2.

Remembrancer of Legal Affairs.

U.R. to H.& L.C.D., No.1770, dated the 15th February 1949.

A-Cs.
H.V.V.
16/5.

Office of the R.L.A.

he Bombay High Court has recently held that the landlord of a building erected on a plot of land demised to him by a local authority like the Bombay Port Trust was not entitled to protection granted by section 4 of the Bombay Ports, Hotel and Lodging House Rules Control Act, 1947. A copy of the judgment is called for and will be shown to H.& L.G.D. when received.

Sd/- P.V.Lad,

Remembrancer of Legal Affairs.

U.R. to H.&L.G.D. No.2059, dated the 21st February 1949.

L-Co.

P.V.V.
16/3.

Office of the R.L.A.

In case No.C.41/48 (Mose Lodger v. the Y.M.C.A.) the Controller of hotels and Lodging Houses passed under section 33 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 an order on 17th November 1948 fixing a fair rate for lodging and board in respect of the Y.M.C.A. Hostel, Central Branch. This order was modified in appeal by Government by its order dated the 19th February 1949 under section 42 of the Act refixing the fair rates fixed by the Controller. Secretary, Health and Local Government Department/ states that the Government order in appeal is merely in substitution of the Controller's order and therefore should take effect from 17th November 1948. The R.L.A. is requested to advise in the matter.

2. The Controller of Hotels and Lodging Houses, passed his order under section 33 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 on 17th November 1948. Since this order did not specify an earlier date fixing the fair rates etc. the order must be deemed to take effect from the date of the order. On appeal this order was revised by Government on 19th February 1949. It is well established that an appeal is not a fresh suit but is only a continuation of the original proceedings and a stage in the suit itself. The decree passed by the Appellate Court is a decree in the suit and the appellate judgment stands in the place of the original judgment for all legal purposes. (see Chitaley's Civil procedure, Vol.1 3rd Edn. p.813). Government had power under sectic 42 to fix the order in appeal from such date as it thinks fit. But the order does not specify any ..

4-Co.
H.V.V.
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such date. In the circumstances the order will take effect from the date of the Controller's order, namely, 17th November 1948. The view taken by the Secretary, Health and Local Government Department at page 32 ante is correct.

Sd/- B P.M.Lad,

Parliamentary Secretary of Legal Affairs.

U.R. to H.& L.G.D. No. 2575, dated the 5th March 1949.

4-Cs.
E.V.V.
16/5.

R.I.No. 17249/24-12-48
O.No. 390 dt. 13-12-49 1'

Office of the R.L.A.

This case was discussed with H.M.(L.) who accepts the opinion substantially and has desired me to point out that under section 38 of the Act it is open to the owner of the lodging house to commence proceedings for eviction on the ground that the lodger has not performed the other conditions of his agreement and that such proceedings are possible in this case on the assumption that it was an implied condition of the agreement that he was not to do cooking in the rooms. In xxx other respects, no amendment of the Act is necessary and H.M. endorses the view taken by the R.L.

Sd/- P.T.Lal
4/3.

Remembrancer of Legal Affairs.

U.R. to H.S.L.G.D. No.2551, dated the 5th March 1949.

M.V.V.
16/5.

Office of the R.T.A.

Assignment on taking pugree

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

Secs. 15 and 13(1)(e).

Under section 15 of the Act, it shall not be lawful after the coming into operation of the Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein. A tenant who commits a breach of this provision is liable to be evicted (see section 13 (1) (e) of the Act). These provisions appear to be sufficient to prohibit assignments for no assignee who would stand the risk of eviction on the ground of the assignment being illegal, would ever think of paying any pugree for such assignment. The question of amending the Act for the purpose does not therefore arise.

Sd/- P.T.Lad,
29/3.
Remembrancer of Legal Affairs.

U.R. to H.S L.C.D. No.3440, dated the 30th March 19

4-Cs.

H.V.V.
16/5.

Office of the R.L.A.

Eviction of Govt. Servant occupying D.D. Chawls rent free.

Bombay Rents Hotel and Lodging House Rates Control Act, 1947.

The Bombay Rent Control Act will not apply; but a notice terminating the lease would be necessary before a retired Government servant or the heirs of a deceased Government servant, continued on the premises as proposed, can be evicted through court.

Sd/- P.N.Lad.

Remembrancer of Legal Affairs.

U.O. to P.D. No.2988, dated the 17th March 1949.

L-Ca.

P.V.V.
16/5.

Office of the R.L.A.

Controller's power to direct payment of charges in advance.

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

Sections 38 and 40.

The powers of the Controller are contained in Part III of the Rent Act and there is no express power under which he can direct the lodgers to make advance payment. He has power to determine what is the fair rate but has no power to direct when that should be paid. The date of payment, it appears, is left to be decided by private contract between the lodger and the manager of the hotel and ordinarily it would be permissible for the manager to demand a month's charges in advance (see section 38 and explanation to section 40). It may be noted that under the English law, too, an innkeeper can demand a reasonable sum in advance and he is not bound to put trust in his guest (see Halsbury, Vol.XVIII, pp. 142-143).

Sd/- P.H.Lad,
6/4.

Remembrancer of Legal Affairs.

U.H. to H.& L.G.D. No.3737 dated the 6th April 1949.

4-Cs.

M.V.V.
16/5.

Office of the R.L.A.

Letting of lockers in safe deposit vault ——— Whether governed by the B.R.H. and L.H.R.C. Act,1947.

The view taken by H. and L.C. Department in para.2 of its office note at p. 5 ante is correct.

Even on the assumption that a vault is a room in a building for the safe keeping of valuables and that a locker is an assignable part of such room, it is doubtful whether such part can be said to have been 'let' in the true sense of that term. Consequently, the case would not be governed by the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

Sd/- P.H.Lad,
3/5.
Remembrancer of Legal Affairs.

U.R. to H. and L.C. Department, No.4905,dated the 4th. May 1949.

4-'s.

H.V.V.
16/5.

Statement of the Case.

It appears that Mr. S. Petros, Proprietor of Petros Boarding House, applied to the Controller of Hotels and Lodging Houses for a certificate under section 39 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, against lodger P.T.Joseph on the ground that the lodger did cooking in his room which is against the rules of the Boarding House and that he failed to abide by his contract to pay charges for lodging and full board. The Controller considered the second ground beyond the scope of his enquiry as it was for the Court to decide that issue and held that cooking, which was done by the lodger in the room, was a satisfactory cause for issuing a certificate under section 39, clause (b) and accordingly issued the certificate. Against that Order the lodger has appealed to Government under section 42. The question for consideration is whether the view taken by the Controller is correct.

The words "for any other cause" in clause (b) of section 39 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, are relatable to the words " accommodation is reasonably and bona fide required". They do not stand by themselves so as to furnish an independent ground and have to be read ejusdem generis. Consequently, what is essential to entitle a certificate to be issued under clause (b) is that the accommodation must be reasonably and bona fide required for occupation . In the present case the lodger Joseph is sought proposed to be evicted not on the ground that the accommodation is required for occupation, but on the ground that he has been doing cooking in the room unauthorisedly. Consequently, the view taken by the Controller is not correct. It is not the proprietor's

4-Cs.
H,V,V,
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contention that cooking has been a nuisance or annoyance to any adjoining or neighbouring lodger. Consequently clause (a) will have no application. If cooking has been done in contravention of any of the rules or conditions of the lodging house it may be possible to obtain relief under section 38. That is however a different matter with which the Controller is not concerned (See R.L.A's opinion No. 390, dated 13.1.49).

* pp. 25-27 ante

This was further confirmed in R.L. A's opinion No. 2551, dated the 5th March 1949 and later on endorsed by H.M.(L).

H.M. L.S.G. Department, however, considers that if this interpretation is accepted, the provision contained in section 39 (b) will become a dead letter for all practical purposes.

As the matter is not free from doubt Government desires the Advocate General to express his opinion on the point.

Sd/- P.N.Lad,
16/4/49

Remembrancer of Legal Affairs.

U.R. to Advocate General No.4188, dated the 18th. April 1949.

4-Cs.
N.V.V.
16/5.

No. 13 of 1949.

Advocate General's Chambers,
High Court,
Bombay, the 21st April 1949.

U. O. R. to the Advocate General of Bombay,
No.4188 dated the 18th of April 1949.

O p i n i o n.

Section 39 of the Bombay rents, etc. Control Act, 1947, is to my mind perfectly plain in its wording. The words " for any other cause " can only be read with the words " accommodation is reasonably and bona-fide required ". I do not see how grammatically it is possible to read the words " for any other cause " as constituting a third and independent ground in addition to the grounds (a) and (b). That is not the way the section has been sub-~~divided~~ divided, and even by doing violence to language, the words " for any other cause " could not possibly be read as relating to something totally diverse from reasonable and bona-fide requirement. In my opinion the Controller could not give the certificate under that section and he has no jurisdiction to do so.

I agree also with the opinion of the R.L.A. that clause (a) of section 39 does not apply. There is no allegation that the lodgers conduct was a nuisance or annoyance to adjoining or neighbouring persons. The real ground is that the lodger's conduct was contrary to the terms of his tenancy and was liable to cause the lodging house keeper's tenancy to be jeopardised. This would be a ground for proceeding under section 38 and not a matter within the Controller's jurisdiction. It seems a pity, because there is absolutely clear proof that the lodger has told a deliberate falsehood, and it strikes one that what was so easily proved before the Controller due to the Controller's right to inspect the premises, would probably not have been proved in a court of law. There would have been

conflicting testimony and proceedings may well have failed. It is difficult to conceive of premises being reasonably and bona-fide required for any other purposes apart from the specifically enumerated ones under sub-section (b). On the other hand, if section 39 were so amended as to enable the Controller to have jurisdiction over such a cause as this it would be desirable. It is a duty that the appeal of an absolute hair should have to succeed.

Sd/-

Advocate General.

4-Cs.
H.V.V.
16/5.

Office of the R.L.A.

A copy of the Statement of the case together with a copy of the Advocate General's opinion No.13 of 1949 is forwarded herewith.

If it is decided to amend section 39 of the Bombay Rents Hotel and Lodging Houses Rates Control Act, 1947 as advised by the Advocate General so as to enable the Controller to have jurisdiction over such a cause as ~~this~~ this, the papers may be forwarded to this Office for scrutiny of the draft.

Sd/- P.M.Lad,
26/4.

U.R. to H. & L.C.D. No.4526, dated the 26th April 1949.

4-Cs.

M.V.V.
16/5.

Office of the R.L.A.

Bombay Rents Hotel Lodging House Rates (Control) Act, 1947 Sections 13 and 15.

In its note at p.10 the Health & Local Government Department observes:-

> " It would appear from the wording of section 15 of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947, and the notification of 24.9.1948, that a person can sell his business 'notwithstanding anything contained in law.' It does not appear that the person can transfer his business 'notwithstanding anything contained in any agreement'. This means that a person who has entered into an agreement with his landlord not to transfer the premises without the landlord's consent, cannot sell his business in accordance with the notification of 24.9.1948, if the landlord refuses permission to transfer the premises to the purchaser. Our intention was that bona fide transfer of business premises should be permitted. It seems desirable therefore to ensure that agreements between landlords and the ~~ck~~ seller do not stand in the way of such bona fide transfer. If the views expressed above are accepted, the notification of 24.9.1948 may be amended so as to make it clear that the transfer may be effected notwithstanding anything contained in law or agreement for the time being in force."

H & L.S.D. Notification No 5975/33 dated 24-9-48

The R.L.A. is requested to advise and to furnish that Department with the necessary draft notification in case he considers that the notification of 24.9.1948 requires to be modified.

2. It is true as observed by the Health & Local Government Department that a person who has entered into an agreement with the landlord not to transfer the premises without the landlord's consent cannot transfer his business premises in accordance with the notification of 24.9.1948. But the proposal to amend that notification to allow such transfers notwithstanding any agreement between the lessor and the lessee not to transfer the premises without the latter's consent would not be legally feasible. For, according to the scheme of the Act sub-leases or assignments are to be discouraged. Under clause (j) of sec. 108 of the Transfer of Property Act, sub-leases would be lawful; but under section 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act, such sub-leases are prohibited. The proviso to that section permits sub-leases in certian cases as notified by Government notwithstanding anything contained in any law, i.e.

to say, notwithstanding the provision of section 15. To this extent section 13 (1) (f) has been modified. A person has a right to contract out of a statute. Consequently notwithstanding relaxation of the prohibition to sub-lease as provided in the proviso to section 15, it would be open to a tenant to agree not to sub-lease, and such agreement would be lawful. Considered in the light of the scheme of the Act, it would be obvious that any statutory provision to free the parties from the restraint of sub-leasing the premises under a contract would be repugnant to the scheme of the Act. It would, therefore, follow that a notification under the proviso to section 15 for the purpose would be not permissible, as it would be contrary to section 15, and also any provision in the Act to that effect would be repugnant to the scheme of the Act.

Sd/- P.N.Lal.
16/5.

Remembrancer of Legal Affairs.

U.R. to H.& L.G.D. 5483, dated the 17th May 1949.

A-Cs.

H.V.V.
16/5.

Continuance of occupation after expiry of lease period by Government - Bombay Rents,Hotel and Lodging House Rates Control Act, 1947 - section 4(1).

Most of the alterations suggested by the landlord are not of material importance and may be accepted. If, however, it is felt that the modifications suggested by the landlord in the standard form of the lease are not in the interests of Government it is not necessary to execute the lease. Section 4(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom.Act.LVII of 1947) makes express provision that the Act shall apply in respect of premises let to the Government or to a local authority. The Sub-Divisional Officer, New River Ganging Sub-Division, Ahmedabad, would therefore be entitled to continue in the building on the same terms and conditions without any renewal of the lease. (See R.L.A's No.5547, dated 14.6.48). If the landlord attempts to evict the Sub-Divisional Officer on the ground that the premises are reasonably and bona fide required of requisitioning these premises may then be considered .

Sd/- P.W.Lad,
6/6.

Remembrancer of Legal Affairs.

U.R. to P.W.D. No.6435, dated the 11th June 1949.

4-Cs.

P.V.V.
16/6.

Office of the R.L.A.

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

Section 33.

Seen and returned.

Although the standard rent as fixed by the Court of Small Causes, Bombay, in terms of the agreement between the parties cannot be disputed, still in view of the statement of the proprietor of the Cecil Hotel as to how the standard rent was made up, it was open to the Controller to settle what part of that standard rent should be accepted as rent for the purpose of determining a fair rate under section 33 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

Sd/- P.M.LAD,
2/6.

Remembrancer of Legal Affairs.

U.R. to H.& L.C.D.No. 6108, dated the 3rd June 1949..

A-Cs.
M.V.V.
16/5.

Office of the R.L.A.

Appeal under - Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 39(b).

The point is concluded by the R.L.A's Opinion No.390, dated the 13th January 1949, and concurred by the Advocate General in his Opinion No.13 dated 21.4.1949. It would not, therefore, be open to the Controller to issue a certificate under Section 39, Clause (b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, on the ground that the owner of the Lodging House wants to close down his Lodging House. In fact, it appears that Section 39 contemplates that the Manager of a Hotel or the owner of a Lodging House is still in business, when he applies for a Certificate under that Section. If the owner of the Lodging House in the present case desires to close down his business there is nothing in the Act to prevent him from so doing. If he closes down his business, it would be open to him to sue for the eviction of the lodgers in a Civil Court without any certificate. Section 39 will have no application in such a case, but in case an eviction suit is filed it would be open to the Lodger to contend that the owner of the Lodging House has not really closed down his business and that claim made is not bonafide, and if he proves so, the Court would not allow or order his eviction without a Certificate under section 39.

Sd/- P.W.LAD,
19/7.

Remembrancer of Legal Affairs.

U.R. to H.& L.D.D.No.8172, dated 20th July 1949.

4-Ca.
M.V.V.
16.5

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

Sections 4(2),5(2) and 36

Re.—R.L.Trust Hostel.

Office of the R.L.A.

It appears that the R.L.Trust Hostel at Ranchod Bhuvan, Girgaum Road,Bombay,which is a Trust Property admits students for lodging, some free and some paying, for one term. On an application by the Trustees of the Hostel and on their agreeing not to increase the charges, the Collector of Bombay, by his order dated 9.5.1946 issued under section 36 of the Bombay Rents, Hotel Rates and Lodging House Rate (Control) Act, 1944, granted exemption in respect of some rooms of this hostel. The Trustees now contend that the hostel cannot be considered to be a lodging house within the meaning of section 5(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, as it conflicts with the Trust Deed, and that the exemption granted granted by the Collector in 1946 still continues so as to oust the jurisdiction of the Controller of Hotels in the matter of fees charged by the hostel and admission and eviction of students. The Controller of Hostels considers that the hostel is a lodging house within the meaning of section 5(2) and that the exemption granted by the Collector on 9.5.1946 under the repealed Act has lapsed. The questions raised for the consideration of the R.L.A. are:-

(1) Whether the R.L.Trust hostel is a lodging house within the meaning of section 5(2) of the Act;

(2) Whether the exemption granted by the Collector of Bombay by his order dated 9.5.1946 still continues to be inforce;

(3) If the Act applies to the hostels where the students are admitted on the specific understanding only for a term can be refused admission by the Trustees in the next term; and

(4) Whether free students in the hostel would be entitled to the protection of the Act against their eviction.

Question (1).- Section 5(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, defines 'hotel' or 'lodging house' as meaning a building or part of a building where lodging with or without board or other services is provided for a monetary consideration; and 'owner of a lodging house' has been defined in section 5(6) to include a Trustee. Admittedly the R.L.Trust in the present case charges some fees to students who are admitted in the hostel, and as these fees constitute a monetary ~~consideration~~ consideration within the meaning of section 5(2), it is ~~immat~~ immaterial whether such fees are nominal or substantial. Consequently, such part of the hostel where students are admitted on payment of fees would be a hotel or lodging house within the meaning of section 5(2) and would be governed by the provisions of the Act.

Question (2).- Section 4(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act empowers Government to direct that all or any of the provisions of this Act shall not apply to premises used for a public purpose of a charitable nature. 'Premises' as defined in section 5(8) do not include a hotel or a lodging house. Consequently, although the hostel in the present case is used for a public purpose of a charitable nature, it would not be entitled to any exemption under section 4(2). The exemption granted by the Collector of Bombay by his order dated 9.5.1946 under the old Act has lapsed and has not been saved by the proviso to section 50 of the Act. The first part of that proviso saves acts or orders of the Controller and not of the Collector; where the second part applies to acts or orders deemed to have been done or passed and not actually done or passed under Part IV of the 1944 enactment.

4-Cs.
P.V.V./16.5

Question 3.- Section 38 of the Bombay Rents, Hotel and lodging House Rates Control Act provides:

> "No manager of a hotel or owner of a lodging house shall evict or refuse board or other services to a lodger so long as he pays or is ready and willing to pay fair rate and observes and performs other conditions of his agreement in so far as they are consistent with the provisions of this Act:
>
> Provided that whether under section 33 or section 34 the Controller has fixed or revised the percentage ofaccommodation for daily and monthly lodgers respectively, the manager of a hotel or owner of a lodging house may refuse accommodation to any daily or monthly lodger, as the case may be, if the accommodation in respect of such class of lodgers is fully occupied."

The proviso to section 38 will have no application to the present case. However, reading section 38 in the light of this proviso, it appears that section contemplates no refusal of admission in hotel or a lodging house so long as the lodger is ready and willing to pay the fair rate etc. and there is accommodation. Consequently, even though students are admitted in thehostel for a term, it would not be possible for the Trustees to refuse admission to these students in the next term unless there is no accommodation.

Question (4) - A hostel where admission to students is free is not governed by the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act. Consequently free students who are admitted in the hostel would not be entitled to claim the protection of the Act and resist eviction.

It may,however, be observed that the Trustees in the present case have pressed that it would not be in the interest of such hostel, nor would it be in the interest of maintenance of proper discipline in such hostel, to apply the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act. There appears to be some substance in this contention. It is, however, for the Administrative Department to consider whether such hostels and hostels which are attached to private colleges should be exempted from the provisions of this Act. If the Administrative Department is inclined to grant exemption to such hostels, the Act will have to be suitably amended.

Sd/- P.M.LAD,/ 24.5
Remembrancer of Legal Affairs.

J.R. to H.& L.G.D. No. 5843 dated the 25th May 1949.
L.Co. M.V.V.- 17.5

Office of the R.L.A.

Fixation of "Standard Rent". The Bombay Rents,Hotel and Lodging House Rates Control, Act,1947... Section 11.

Government may offer the landlord rent for the period from 20th February 1948 at the rate of Rs. 96 per month (inclusive of conservancy charges and costs for the engagement of a mali) with a suggestion that he may apply to the Court for fixing the standard rent under the Rent Control Act of 1947 if he were not prepared to accept the rent offered by Government; and it is not necessary that Government should apply to the Court for fixing the standard rent.

Sd/- P.N.LAD,
26/6

Remembrancer of Legal Affairs.

U.R. to H.& L.G.Deptt. 7205, dated the 29th June 1948.

4-Cs.
N.V.V.
17/5.

Office of the R.L.A.

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

Section 18. Whether any amendment is necessary.

In para.5 of its note at page 16, the Health and Local Government Department observes :

"The Association has contended that there is considerable difference of opinion in the interpretation of Section 18 of the Act (Rent Control Act). It is doubtful whether the section does not make penal recovery of rent prevalent before the Act came into force but which is in excess of the standard rent. The contention of the Association is not entirely wrong. Besides, there is also difference of opinion as regards the exact connotation of the terms fine, premium or other like sum or deposit or any consideration the demanding of which by the landlords is an offence."

The Remembrancer of Legal Affairs is requested to advise whether any amendment of the section is really necessary.

No amendment of section 18 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, appears necessary. Under sub-section (1) of that section the recovery of any fine, premium or other like sum or deposit or any consideration other than the standard rent or permitted increases in respect of the grant, renew renewal or continuance of a lease of any premises, etc., would be an offence. It is clear from this provision that the collection of rent in excess of the standard rent in respect of the continuance of a lease of any premises is an offence. "Standard rent" as defined in section 5(10) in relation to any premises means -

(a) where the standard rent is fixed by the court and the Controller respectively under the Bombay Rent Restriction Act, 1939, or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 194', such standard rent; or

(b) where the standard rent is not so fixed, subject to the provisions of section 11,

(i) the rent at which the premises were let on the first day of September 1940, or ....

A-Cs.
H.V.V.
17/5.

(ii) where they were not let on the first day of September 1940, the rent at which they were last let before that date, or

(iii) where they were let after the first day of September 1940, the rent at which they were first let, or

(iv) in any of the cases specified in section 11, the rent fixed by the court.

Section 11 provides for fixing the standard rent by the Court on an application being made to it for that purpose by any of the parties. If the rent collected by a landlord is the rent which was prevalent before the Act of 1947 came into force, the question that would arise is whether such rent is in excess of the standard rent fixed by the court either under the previous Rent Control Acts or under section 11 of the present Rent Control Act, and if not, whether it is in excess of the standard rent as could be determined under sub-clause (b) of section 5(10). If the rent so collected is in excess of such standard rent, the collection of such rent would certainly be in respect of the continuance of the lease and consequently and offence under section 18(1). If, however, the standard rent has not been fixed by the Court and it cannot also be determined under sub-clause (b) of clause (10) of section 5, and if there is no dispute between the parties as to the standard rent of the premises, then the collection of the prevalent rent would not be an offence under section 18 unless and until the standard rent is fixed by the Court and the recovery of the prevalent rent even after the~~standard~~ standard rent is fixed would be an offence under section 18, provided it is in excess of the standard rent thus ~~fixed~~ fixed.

Sd/- .M.LAD,
5/7.
Remembrancer of Legal Affairs.

P.S. to H.& L.G.D. No.7479, dated the 6th July 1949.

L-Cs.
H.V.V./17.5

Office of the R.L.A.

Bom.Rents Hotel and Lodging House Rates Control Act,1947. Section 4(1).

Premises let for eduction.

Sub-section(1) of section 6 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, provides that in the areas ~~specified~~ specified in Schedule I, PartII shall apply to premises let for residence, education, business, trade or storage. Thana District is specified in Schedule I to the Act. Under the proviso to section 6(1), Government may by notification in the Official Gazette direct that in any of the said areas, Part II shall cease to apply to premises let for any of the ~~said~~ said purposes. The words "said areas" refer to the areas specified in Schedule I and the words "said purposes" refer to the purposes specified in sub-section(1). In exercise of power conferred by the proviso to section 6(1), Government notified that in the areas specified in the Schedule appended to the Health and Local Government Department Notification No.5975/32-I dated 20th August 1948, Part II of the Acts shall cease to apply with effect from the date of the notification -

(i) to premises let for residence, business, trade or storage, or

(ii) to premises let to Government or on local authority for the purpose of setting up-

(a) an office, or

(b) a public hospital or dispensary.

It will be clear from the Notification that since premises let to Government for educational purposes are not mentioned therein, Part II of the Act read with section 4(1) would continue to apply to premises let to Government for educational purposes.

From the description of the premises at para 1 ante, it is clear that the main building is used for housing the Training College for men, Bungalow No.1 for Principal's quarters and Bungalow No.2 & 3 as hostels. Eduction is in the general interest of

of the community and a hostel attached to the Training College can appropriately be said to have been maintained as part of the educational scheme for advancement of learning, and hence buildings used as hostels may be said to be a necessary adjunct to the main building used for housing the College and consequently they can be deemed to be used for the purposes of education. The bungalow ~~xxxx~~ occupied by the Principal is necessary for the discharge of his duty of supervision and welfare of the students, and consequently, that ~~xx~~ building also would be deemed to be occupied for the educational purpose. See 16 Bom. 217 and 20 Bom. L.R.539. The view expressed by the Under Secretary, Education and ~~Xxxxxxx~~ Industries Department in para.3 of his note dated 24th May 1949 is correct.

Sd/- P.Z.LAD,
24/6.

Remembrancer of Legal Affairs.

U.R. to E.& I.D. No.7051 dated the 25th June 1949.

4-Cs.
M.V.V.
17/6.

Office of the R.L.A.

Sub-section (1) of section 40 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, penalises the receipt of any consideration other than the fair rate in respect of the grant or continuance of accomodation in the hotel or lodging house. It is indisputable that Dr. Bhide did receive in this case one month's charges and on month's deposit in advance. The acceptance of the advance and the deposit is clearly an offence. Two extenuating circumstances are urged in his favour:

(1) that the rules under which the advance and the deposit were taken were submitted to the Administrative Department concerned: they had also come under the scrutiny of the Controller without any objection; and

(2) that after the illegality was brought to his notice, he attempted to refund the amounts. These grounds would undoubtedly weigh with the Court in awarding a punishment. Whether for these grounds a prosecution should not be launched is a matter of policy for the Administrative Department to decide.

2. Sub-section (2) of section 40 penalises the charging of an amount in excess of the fair rate in contravention of section 37. Here too it is abundantly clear that Dr. Bhide did charge in excess of the fair rate fixed by the Controller. His excuse was that he had preferred an appeal to Government and believed that pending the decision of the appeal he was entitled to levy the former charge. His representations that the Controller had permitted the levy pending the decision of the appeal or that he was doing so after due sanction and approval of Government seem untrue. However, in this instance also he says he refunded the sum when the illegality was clearly explained to him. The fact that he had appealed

against the fair rate as fixed by the Controller and has refunded the sum which he levied will similarly be considered in his favour in seting out punishing. As said before, whether for these reasons a prosecution should not be launched is a matter of policy for the Administrative Department to decide.

Sd/- P.N.LAD,

Remembrancer of Legal Affairs.

U.R. No H.& L.G.D. No.10450 dated the 15th September 1949.

A-Cs.
N.V.V.
17/9.

Office of the R.L.A.

Under Government Notification, Health and Local Government Department, No.5975/33, dated the 12th May 1948 (as amended on the 24th September 1948) issued under section 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 transfer and assignment by lessees of their interests in leasehold premises is allowed if such transfer or assignment is incidental to the sale of a business as a going concern together with the stock in trade and the goodwill thereof and the transfer or assignment is of the whole of the interest of the transferor or assignee. As a general rule and in the absence of express contract, there is not in a partnership between Solicitors any partnership asset which is capable of being sold or valued as the goodwill of the partnership business. Arundell V.Bell (1883) 52 L.J.Ch.537;49 L.T.345 31 W.R.477 C.A. Much less can it be said that an Advocate acting singly in his business has a goodwill therein that is capable of being sold or valued. It does not therefore appear that transfer or assignment of a goodwill of an Advocate would be permissible under the notification.

The Secretary of the Bombay Bar Council who was unofficially consulted in the matter agrees with the above view.

Sd/- P.H.LAD,
26/11.

Remembrancer of Legal Affairs.

R.R. to Labour Deptt. No.13630, dated the 28th November 1949.

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I.V.V.
17.5.55

Office of the R. L. A.

¶ Paragraph2(ii) of Health and Local Government Department note dated the 15th February 1949 at pages 31232 ante.

By Government Notification, Health and Local Government Department, No.5975/33, dated the 12th May 1948, Government has permitted the transfer of assignment of their interests in leasehold premises, on sale or mortgage without possession, by lessees holding building sites under leases the unexpired period of which exceeds 5 years ~~xxxxxxxx~~ on the date of the notification, provided that such transfer is of their entire interest in the building site together with the whole building standing thereon. A member of a Cooperative Housing Society acquires the interest in premises through a Cooperative Society. The Bombay Co-operative Societies Act, 1925 enables a Cooperative Society to permit its members to transfer their entire interest in premises to another person in accordance with the rules and bye laws of the society. As the transfer is of entire interest of a member in premises, there is nothing in the Government Notification which prohibits such transfer under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. No amendment of the Act or of the above notification is necessary.

Para 2 (iii) of H.& L.G.D. note - It appears that the rent of premises constructed by a society or constructed on lands leased by a society to its member is regulated by rules and bye law laws of every society. Such rules and bye laws are binding upon its members. The society can amend the relevant rules and bye-laws relating to the payment of rent in the manner provided by the Bombay Co-operative Societies Act, 1925 so as to empower the society to charge a higher rent. In the case of co-operative Society, the members themselves assume the role of landlord and agree to the increase of rent to be paid by them. There does not exist any individual person as a landlord/apart from members themselves

Sd/- P.M.LAD,
15/12.
Accountancer of Legal Affairs,

W.V.V./17.5 U.R.to Labour Deptt.through H.& L.G.D. No.14609,dtd.15th.De-

L.D. R.I. No.16476 dated 11.10.49.

Submitted.

This pertains to the representation from the Vera Bhuvan Tenant's Association that their landlord profiteers in electricity supplied to the tenants in his building. It appears that the landlord collects the charges @ for the current consumed at the rate of Re.0-4-0 per unit from his tenants, whereas the B.E.S.T. charges him only Re.0-3-3 per unit inclusive of electricity duty.

P.W.D. is of the opinion that the action of the landlord in supplying energy to his tenants does not amount to his ~~many~~ engaging in the business of supplying energy and thus there is no breach of the provisions of sec. 22 of the Indian Electricity Act, 1910.

R.L.A. has been requested to confirm this presumption.

4-Cs.
M.V.V.
17/5.

Office of the F.L.A.

Bombay Rents, Hotel and Lodging House Rates Act, 1947.

Section 24(3).

The presumption made by P.W.D. is correct. The tenants however may be asked not to pay more than Re.0-3-3 per unit and, if the landlord cuts off or withholds the supply of energy on that ground, the tenants might take action against him under section 24(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

Sd/- P.M.LAD,
10.12.

Peshkar-cum-Asstt. Secretary of Legal Affairs.

U.R. to P.W.D., No.14374, dated the 17th Dec. 1949.

A.Cs.
M.V.V.
17/X.

L.D.S.I.No.20206, dt. 8/12/1949.

Submitted.

The Controller by his order dated 30/12/48 fixed the rates for lodgers in Windsor Hotel. The lodgers appealed to the Provl. Govt. against this order and Govt. revised the rates by order No.6501/32, dated 27-5-49. As the fair rates fixed by Govt. are lower than the rates fixed by the Controller and the Proprietor not given a hearing, he contends that Govt. order is not binding on him. It is admitted by the Labour Deptt. that no hearing was granted to the Proprietor and that the case was decided on merits after consulting the Controller.

The question for B.L.A's consideration is whether the mere fact that the owner of the Windsor Hotel was not consulted by Govt. before order dated 27-5-49 was issued, would invalidate that order, notwithstanding the fact that sec.42 of the Rent Act does not specifically provide that all the parties concerned should be consulted before Government passes an order on appeal revising the rates fixed by the Controller.

A-C.,

M.V.V.
17/5.

Office of the R.L.A.

Since the order in appeal was intended to operate prejudicially to the Windsor Hotel, it was essential that the proprietor should have been given a hearing before making that order. This rule is founded upon the plainest principles of natural justice. See Cooper v. Wandsworth, E. of W.67; Mohandas Kulji Sicker v. The Collector of Bombay, 49 Bom. L.R.414; S.C.
Carbatt'a and anr.v. Collector of Bombay and Indra Singh, Miscellaneous No. 185 of 1946;
and R.L.A's opinion No. 12140, dated 21/12/1948.
A fresh hearing may, therefore, be given to the proprietor and the order revised if necessary.

Sd/- P.H.LAD,
30/12.

Remembrancer of Legal Affairs.

L.R. to Labour Department No. 15338, dated the 31st December 1949.

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M.U.V.
17/5.

Office of the R.L.A.

Please see the linked case. If as suggested therein a fresh hearing is to be given to the Proprietor, the question of prosecuting him would not survive, particularly as it appears that the present orders were not officially communicated to him.

Sd/- P.N.LAD,
30/12.
Remembrancer of Legal Affairs,

U.P. to XX. Labour Deptt. No. 15379, dated the 31st. December 1949.

4-Cs.
N.V.V.
17/5.